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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Cupp et al.
Appl. No.: 09/154,646
Conf. No.: 7285
Filed: September 17, 1998
Title: DENTAL CARE PET FOOD
Art Unit: 1761
Examiner: K. Hendricks
Docket No.: 112701-21

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' REPLY BRIEF IN RESPONSE TO SUPPLEMENTAL EXAMINER'S ANSWER

Sir:

I. INTRODUCTION

Appellants respectfully submit a Reply Brief in response to the Supplemental Examiner's Answer dated October 7, 2003 pursuant to 37 C.F.R. § 1.193(b)(1). Appellants believe that the Supplemental Examiner's Answer has failed to remedy the deficiencies with respect to the Final Office Action dated January 2, 2001 as noted in Appellants' Appeal Brief filed on May 21, 2001, Appellants' Reply Brief filed on October 1, 2001 and further for at least the reasons set forth below. Accordingly, Appellants respectfully request that the rejections of the pending claims on appeal be reversed.

II. THE PATENT OFFICE HAS MISCHARACTERIZED *SIMONE*

Appellants respectfully submit that the Patent Office has mischaracterized the *Simone* reference. More specifically, Appellants believe that the Patent Office's position with respect to the teaching in *Simone* regarding a moisture content of about 10% to about 30% is improper. Therefore, Appellants respectfully submit that *Simone* at least fails to disclose the moisture content feature of the claimed invention as detailed below.

Of the pending claims at issue on appeal in view of *Simone*, claims 1, 13, 20 and 24 are the sole independent claims. Appellants note that claims 8-12 have been allowed as indicated on

page 4 of the Supplemental Examiner's Answer and thus, the rejections with respect to same have been rendered moot.

Regarding independent claims 1, 13, 20 and 24, each require a dry pet food that includes, in part, a moisture content of less than 10% by weight. Contrary to the Patent Office's position, *Simone* at least fails to disclose the moisture content level as claimed. Indeed, *Simone* states that the moisture level should be equal to or greater than 12% by weight. In fact, the moisture content in *Simone* is preferably 16-25% by weight. See, *Simone*, for example, col. 5, lines 5-10.

In part, what the Patent Office has done is to rely on the fact that as the product of *Simone* leaves the extruder, it purportedly has a moisture content of about 10-35%. However, this is an intermediate product and is not the final product of *Simone*. See, Simone, for example, col. 7, lines 18-21. Indeed, in the very next paragraph, *Simone* states that the product is "allowed to cool and dry to a moisture content of about 12% to about 35% by weight water" after extrusion. See, *Simone*, col. 7, lines 22-28.

The fact that the moisture content of the product as it leaves the extruder may be 10% is inapposite as this is not the final product. Indeed, the emphasis of *Simone* relates to a final product that has a moisture content of greater than 12% as previously discussed. This is clearly an important feature to *Simone* as this moisture level purportedly imparts flexibility. See, *Simone*, col. 5, lines 5-9.

Even assuming *Simone* does disclose a final product having a moisture content of at least 10% moisture by weight, which Appellants believe it does not, the anticipation rejection is not proper. As previously discussed, each of the claims at issue require a moisture content of less than 10% by weight. Clearly, one skilled in the art would not consider that an overlap exist between what *Simone* allegedly discloses and the claimed moisture content feature. The preferred moisture content of *Simone* is at least 12%, and more preferably 16-35% as discussed above. See, *Simone*, col. 5, lines 5-10. Indeed, the EXAMPLE in *Simone* relates to a chew product that has a moisture content of 20% by weight. See, *Simone*, col. 8, lines 2-22. Clearly, this is a teaching away from the claimed invention. Based on at least the differences between *Simone* and the claimed invention as discussed above, this demonstrates in and of itself that the anticipation rejection is not proper and thus, should be reversed.

Further, Appellants note for the record that the claims at issue should not be considered obvious in view of *Simone*. Indeed, the Patent Office even admits that a rejection in view of

Simone under 35 U.S.C. §103 would be improper. See, Supplemental Examiner's Answer, page 3. Therefore, Applicants believe that the claimed invention at issue is patentable over *Simone* and thus, respectfully request that the rejection in view of *Simone* be reversed.

III. CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the Supplemental Examiner's Answer does not remedy the deficiencies noted in Appellants' Appeal Brief, Appellants' Reply Brief and further at least for the reasons discussed above with respect to the Final Office Action. Therefore, Appellants respectfully request that the Board of Appeals reverse the rejections with respect to pending claims 1-3, 6-7, 13-15, 17-20 and 24 on appeal. As previously discussed, claims 8-12 have been allowed and thus the rejections with respect to same have been rendered moot. Moreover, claims 4-5, 16 and 21-23 have been considered free of the prior art but have been objected to as being dependent upon a rejected claim. See, Supplemental Examiner's Answer, pages 2 and 3.

Respectfully submitted,

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Invention: **DENTAL PET FOOD**

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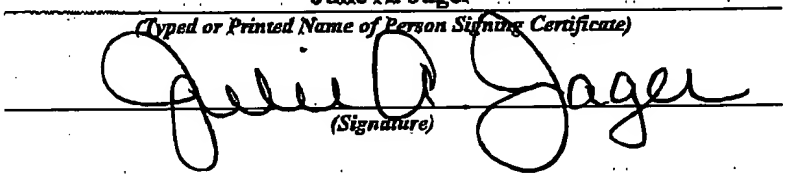
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Title: **DENTAL CARE PET FOOD**

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